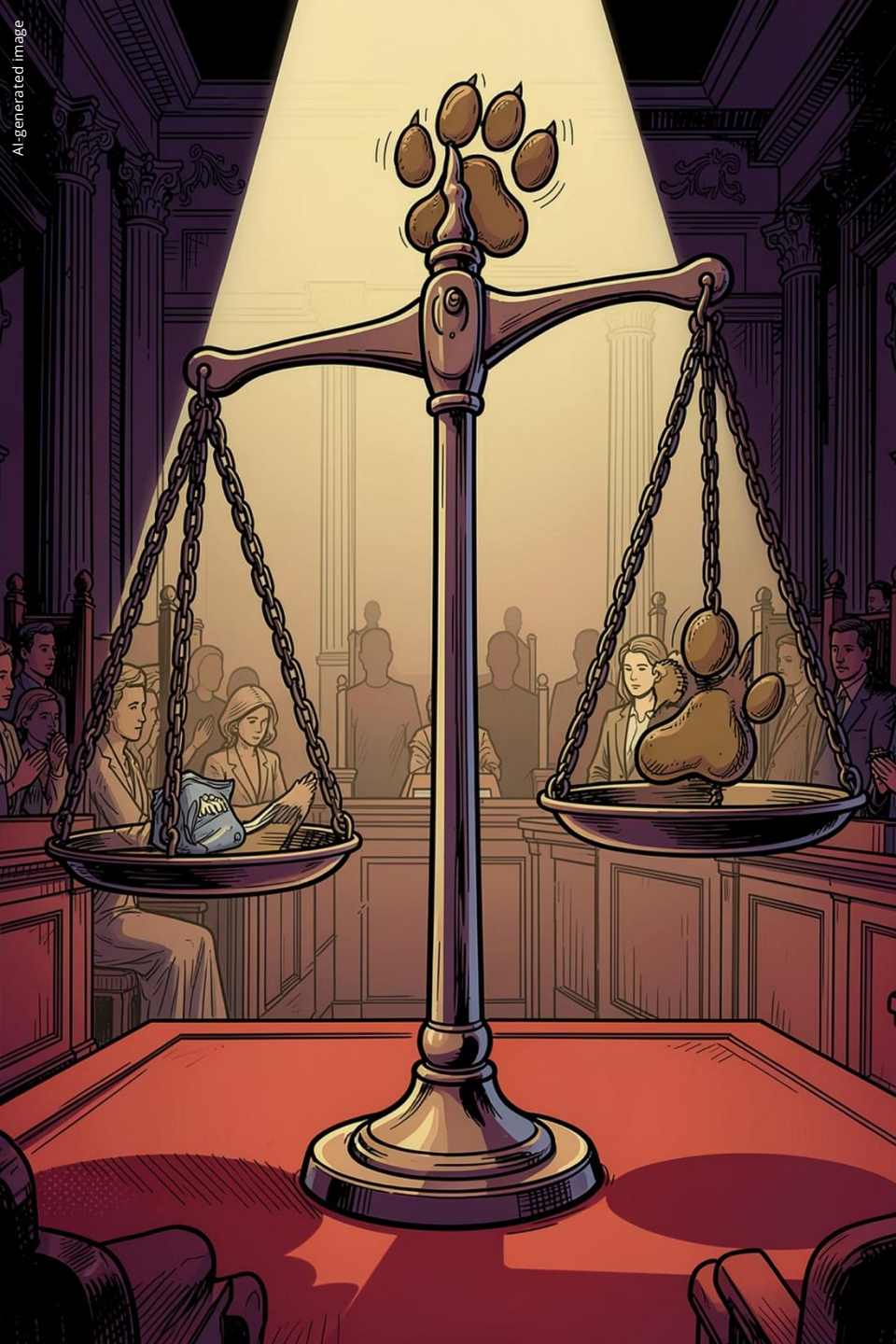




Social Membership: Animal Law beyond the Property/Personhood Impasse

WILL KYMLICKA

Despite a steady stream of new animal protection laws, the **basic legal foundations of animal oppression** remain largely unchanged. Our legal system, he argues, has reached an impasse, because all existing reform efforts are trapped in what he calls **the property/personhood dilemma**.

Presentation by Florian Weigel

The Interest-Convergence Principle

- animals are protected only when it suits human interests
- protection happens when it doesn't conflict with human desires
- reform is driven by convenience, not full moral commitment

The Cow Example

- cows are stunned before slaughter
- the goal is to reduce pain — but only because meat is still the outcome
- protection serves *us*, not the cow

The Fish Counter-Example

- fish are usually not stunned
- it would disrupt the fishing industry
- the same humane logic disappears when it becomes inconvenient

❗ The law does not protect animals from exploitation — it regulates exploitation to make it more palatable for humans.

Path 1: Welfarist Reforms — Scratching the Surface

- **welfarist reforms** try to improve conditions within the current system
- bigger cages, fewer abusive methods, and similar changes
- Kymlicka is deeply skeptical of this approach

Superficial Change

- reforms often scratch the surface
- the industry adapts with new exploitative methods
- examples: biotechnology
- the system of exploitation stays intact

The "Dignity" Contradiction

- words like "**animal dignity**" can sound protective
- but painful experiments are still allowed when humans benefit
- protection language is hollow when interest-convergence still rules

Following the Same Logic

- welfarist reform follows the same old principle
- it makes exploitation more comfortable for us
- it does not make exploitation less exploitative for them
- it cannot break the structural deadlock

Path 2: Personhood — Politically Utopian

- give animals basic rights, moving them from **property** to full **personhood**
- lawyers are pushing this for great apes and elephants
- for **farmed animals**, Kymlicka says this is wildly **utopian**

The Political Reality

- only **1 to 2 percent** of people are vegan
- no major party would back basic rights for pigs or chickens
- public support is far too weak
- legal theory and political feasibility are far apart

Why Both Paths Are Blocked

- **welfarism** doesn't break exploitation's logic
- **personhood** lacks political support for farmed animals
- **property status** stays legally intact
- **animal-industrial complex** resists change

The Third Way: The "Day After" Question

- both classic paths are blocked
- Kymlicka offers a third way
- core thought experiment: **What if all animals had rights tomorrow?**

The Wolf vs. The Dog

- wild wolf: leave it alone in nature
- domestic dog: brought into human society
- the dog becomes dependent on us
- that relationship creates a **birthright** to membership and care

The Key Insight

- different animals need different kinds of protection
- biological similarity does not mean the same justice
- relationship, not just species, shapes our obligations
- this is what Kymlicka's third path puts at the center

Kymlicka's Two-Level View of Justice

- two-level framework for animal justice
- separates universal moral claims from relational, context-dependent ones
- theoretical backbone of Kymlicka's proposal

Level 1: Universal Basic Rights

- applies to all sentient animals
- based on intrinsic moral status
- mostly negative rights: life, bodily integrity, no confinement or experimentation
- goal: end property status and recognize full personhood

Level 2: Relational / Group-Differentiated Rights

- depends on the animal's relationship to human society
- wild animals: autonomy and habitat
- domesticated animals: social membership
- positive rights: protection, health care, safe working conditions

✓ Instead of waiting in vain for the political achievement of personhood (Level 1), we can start *right now* by including animals into our everyday social categories as family members or co-workers through Level 2. This **social recognition strategy** is politically much more realistic, because large parts of the public already see their pets as family members anyway.

Social Membership in Practice: Animals as Family

- **social membership** shows a clear gap between social reality and legal reality
- over **90%** of people see companion animals as **family members**
- the law still treats pets mainly as **property**



Divorce & Custody

- courts often use **property rules**, not family law
- pet custody is decided by ownership, not the animal's welfare
- some judges are starting to apply **family standards** to pets



Tort Law

- damages are usually based on **market value**
- this ignores the loss of a beloved companion
- animals are treated like replaceable objects



Liability & Inheritance

- **pet trusts** show how law can adapt
- animals should be recognized as **family members**
- this moves them out of the **property box**

Social Membership in Practice: Animals as Co-Workers

- **workplace lens:** many animals were brought into society to work alongside humans
- they appear in the military, police, airports, farms, and labs
- in some settings, humans already see animals as true **colleagues**

The Military Dog Breakthrough

- US Army dogs were once treated as "**equipment**"
- pressure from soldiers helped reclassify them as "**personnel**"
- that change supports **repatriation** and **peaceful retirement**
- some retired police dogs now even receive a **pension**
- this raises basic labor-rights questions: safety, hours, and retirement

The Limits of This Model

- the term "co-worker" is sometimes used as a rhetorical mask for exploitation
- true social recognition requires actual **membership claims** and labour rights, not just the right to "humane use"
- **social membership** as a stepping stone must always be backstopped by **personhood** as a safety net
- without personhood, there is a constant risk of backsliding into the old **interest-convergence** principle

Conclusion: Social Membership as a Stepping Stone

- Kymlicka's conclusion is modest and ambitious
- gradually integrate domesticated animals into society
- recognize them legally as **family members** or **co-workers**
- **social membership** complements, but does not replace, basic rights

→ Not a Replacement, But a Complement

- does not replace full personhood (Level 1)
- advances now while broader rights continue

→ Politically Feasible Right Now

- full personhood for farmed animals is not yet realistic
- social membership is a practical first step

→ The Medium-Term Lever

- recognizing animals as co-workers and family members can shift legal and cultural categories
- one relationship at a time

Because we cannot immediately grant full personhood to farmed animals right now anyway, fighting for their social membership is a promising and politically feasible stepping stone to finally see them as individual persons.